

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DWIGHT ERVIN ANDREWS,

Petitioner,

Case No. 2:06-CV-242

v.

Hon. Gordon J. Quist

DAVID BERGH,

Respondent.

ORDER

The Court has before it Petitioner's Motion for Relief from this Court's Judgment dismissing his petition for habeas corpus under Rule 4, Rules Governing § 2254 Cases. Petitioner sought to challenge his state court conviction of attempted larceny from a motor vehicle. Petitioner was convicted on March 26, 1987, and was sentenced to 20 to 30 months imprisonment. According to the MDOC Offender Tracking Information System (OTIS), Petitioner finished serving this sentence on August 21, 1989. *See* <http://www.state.mi.us/mdoc/asp/otis2profile.asp?mdocNumber=187553>. Following a magistrate's report and recommendation, the Court denied the petition because Petitioner was no longer "in custody" as a result of the conviction he was seeking to attack. Additionally, the Court determined that Petitioner's application was barred by the one-year period of limitation provided in 28 U.S.C. § 2244(d)(1).

In his motion for relief, Petitioner argues that he is still "in custody" for the 1987 conviction of attempted larceny from a motor vehicle. In support of his argument, Petitioner has provided a letter from the Michigan Department of Corrections discussing how consecutive sentences are calculated. However, the letter does not prove that Petitioner is still being incarcerated for his 1987

attempted larceny conviction. The letter refers to more recent convictions for which Petitioner is currently incarcerated. As OTIS makes clear, Petitioner has fully satisfied the terms of the conviction he seeks to attack. Therefore, the Court properly dismissed his petition for habeas corpus challenging this conviction. Furthermore, Petitioner's claim would still be barred by the one-year limitations period, and Petitioner has not made any arguments to the contrary. Therefore,

IT IS HEREBY ORDERED that Petitioner's Motion for Relief (docket no. 11) is **DENIED**.

Dated: May 20, 2008

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE